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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955.

No. 71.

LONNIE AFFRONTI, PETITIONER,

VS.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

REPLY BRIEF OF PETITIONER.

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The United States has filed its brief in which it seeks to have the judgment of the Court of Appeals affirmed and bases its argument mainly on the holding of this court in *United States* v. *Murray*, 275 U. S. 347.

The opinion of the Court in that case merely states that Frederick H. Cook was sentenced to a total of 14 years and 9 months. During the service of part of that sentence his application was filed and an order was entered placing him on probation in the district where he was sentenced.

In the Murray case, decided in the same appeal, Murray was sentenced to 3 months on 6 counts, the terms to run concurrently. From the facts as stated in the record clearly the District Court lost jurisdiction, the service of the sentences having already started.

On page 9 of its brief the Government inadvertently stated that the petitioner's application was filed 9 years after commitment, whereas the record clearly shows that the petitioner was serving the first 5 years and had been confined under that sentence for a period of 4 years (R. 18, 11, 12, 13).

In the Kirk case, cited by the petitioner in his brief and also mentioned in the Government's brief, three defendants were sentenced to 17½ years on the first count of an indictment; 17½ years on the second count; and 2 years on the third count, the sentences to run consecutively. But the Court of Appeals for the Ninth Circuit, in considering the application in the *Murray case* (186 F. 2d l. c. 187), stated:

> "The order of February 1, 1949, was entered upon the court's own motion and without affording the defendant an opportunity to be heard, the Court being persuaded that the case of *Bradford* v. *United States*, 5 Cir., 156 F. 2d 210, was determinative and that the order suspending the sentences as to him was beyond the court's jurisdiction.
>
> "The Bradford case is to be distinguished in that in that case the defendant had begun the service of the sentence which the court undertook to reduce. The conclusion reached there was proper in view of the cases of *United States* v. *Murray*, and *Cook* v. *United States*, 275 U. S. 347, 48 S. Ct. 146, 72 L. Ed. 309, where it was held that the trial court was powerless to change a sentence after the service of the sentence had begun, and that any other construction of the Probation Act

would be inconsistent with the parole powers of the Board of Parole and the executive power of clemency. The Bradford case stated that the beginning of the service of the sentence was not the controlling factor and held that any authority of the court which imposed the sentence to change the same expired with the term of the court during which the sentence was imposed. The court was there dealing with the scope of the inherent power to reduce a sentence, not with the power under the Probation Act."

Title 18, U. S. C. A., Sec. 4161, dealing generally with the computation of good time allowances, provides:

> "When two or more consecutive sentences are to be served, the aggregate of the several sentences shall be the basis upon which the deduction shall be computed. June 25, 1948, c. 645, 62 Stat. 853."

We think the language is persuasive and establishes that the use of the plural (sentences) indicated that Congress had in mind that sentences would be considered as separate from one another although the total time to be served determined the statutory allowance.

CONCLUSION.

We again urge the Court to reverse the decision of the Court of Appeals in this case and hold that the District Court has jurisdiction to entertain the motion filed in that Court.

Respectfully submitted,

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